



**DEPARTMENT OF PUBLIC SAFETY  
REPORT TO THE 2014 LEGISLATURE**

**In Response to Act 194, Session Laws of Hawaii 2010  
SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES**

**December 2013**

## **Act 194, Session Laws of Hawaii 2010**

### **SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES**

Act 194, Session Laws of Hawaii 2010, requires that the Department of Public Safety (PSD) report to the Legislature, the statistical information related to the number of sexual assaults that occurred while a person is in the custody of the Department of Public Safety. Accordingly, the data for fiscal year 2013 (July 2012 – June 2013) is listed below.

#### **I. Sexual assaults by persons in custody against other persons in the custody of PSD.**

There were a total of fourteen “offender on offender” reported incidents of sexual assault, during the fiscal year of 2013. The departmental administrative investigation did substantiate three of the allegations made by victim offenders, which resulted in administrative disciplinary action. Of the remaining eleven reported incidents, ten were closed based on an investigative finding of either “unsubstantiated” or “unfounded.” There is one reported incident that is still pending the administrative investigative process. All reported incidents of sexual assault are also reported to law enforcement authorities for a criminal investigation.

#### **II. Sexual assaults by correctional staff against persons in custody of PSD.**

There were a total of four “staff on offender” reported incidents of sexual assault, during the fiscal year of 2013. The departmental administrative investigation did “substantiate” one allegation made by a victim offender, which was referred to PSD’s administrative disciplinary process and to the County law enforcement. This incident is currently pending with the County’s Prosecutor’s Office for criminal prosecution. Of the remaining three reported incidents, two were closed based on an investigative finding of either “unsubstantiated” or “unfounded.” There is one reported incident that is pending the administrative investigative process. All reported incidents of sexual assault are also reported to the law enforcement authorities for a criminal investigation.

#### **III. Non-criminal sexual misconduct by staff, including sexual harassment of persons in custody of PSD.**

There were a total of four “staff on offender” reported incidents of sexual harassment, during the fiscal year of 2013. These reported incidents resulted in an investigative finding of “unfounded.”

#### **IV. Criminal cases initiated, and closed for sexual assaults by or upon a person in custody of PSD.**

There was one criminal case initiated during this period, which is still pending in the criminal court system. A previous criminal case related to a “staff on

offender” sexual assault from fiscal year 2012, resulted in a “not guilty” judgment during this period.

**V. Civil Claims filed and closed for sexual assaults by or upon a person in custody of PSD.**

There were no new civil lawsuits filed related to allegations of sexual harassment and/or sexual assault by a victim offender, during the fiscal year of 2013.

**VI. PREA UPDATE**

Act 194 also requires PSD to report to the Legislature on its efforts to implement the Prison Rape Elimination Act of 2003 (PREA) in our state correctional facilities and those correctional facilities under contract for the housing of PSD inmates. The goal of PREA focuses on preventing, reducing, eliminating, investigating incidents, providing treatment for victims, and the prosecution of accusers.

The final PREA National Standards were signed by U.S. Attorney General on May 16, 2012 and published in the Federal Register on June 20, 2012. All State and County prisons (including PSD’s contracted correctional facilities), jails, lockups, juvenile facilities, and community confinement facilities (e.g. halfway houses, reentry centers, and day reporting centers) must comply with these standards. PSD has developed a formalized training curriculum to educate staff, contractors, and volunteers on the PREA Standards and has implemented a structured reporting process to ensure that PREA-type of allegations are managed by our multi-disciplinary professionals. PSD is networking with sex abuse treatment programs and reporting agencies to ensure the successful prosecution of perpetrators through the administrative and criminal process.

In Fiscal Year 2014, PSD will be subject to external audits for compliance with the PREA National Standards. It is important to note that the penalty for being "not substantially in compliance" with the national standards is a five percent reductions in federal grant funds utilized for prison purposes. An exception to this penalty requires the Governor to certify that the projected five percent reductions of grant funds will be utilized solely to ensure compliance with PREA.

PSD is current networking with other West Coast states to develop a Memorandum of Understanding (MOU) for a Reciprocal Auditing process. PREA requires an annual audit of one-third of our facilities on a three year cycle that is conducted by a Department of Justice (DOJ) Certified Auditor, who is not an employee of the jurisdiction and did not receive any compensation from the State within a specified period. The goal of the MOU is to minimize audit costs by sharing State staff resources among the MOU state members on a rotational basis to conduct the mandated PREA audits. PSD staff will be attending DOJ training to become a Certified PREA Auditor in January 2014.

PREA impacts the Department of Public Safety in Corrections and Law Enforcement, as well as the Office of Youth Services’ Hawaii Youth Correctional

Facility. The management of the finalized PREA National Standards will have a significant impact on PSD's budget, programs, and resources; therefore, in the future, PSD will respectfully ask that the Legislature consider the financial needs for PSD to "substantially comply" with the PREA National Standards.